UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:08CV382-3-W (3:05CR391)

ARTHUR T. McILWAINE,)	
Petitioner,)	
v.)	<u>ORDER</u>
UNITED STATES OF AMERICA)	
Respondent.)	

THIS MATTER is before this Court upon Respondent's Answer and Motion for Summary Judgment, (Doc. No. 13), filed on February 20, 2009.

In accordance with <u>Roseboro v. Garrison</u>, 528 F.2d 309 (4th Cir. 1975), the Court advises Petitioner, who is proceeding <u>pro se</u>, of the heavy burden that he carries in responding to Respondent's Motion for Summary Judgment.

Rule 56(e)(2), Federal Rules of Civil Procedure, provides:

When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must - by affidavits or as otherwise provided in this rule - set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party.

This language means that if the Petitioner has any evidence to offer to show that there is a genuine issue for trial, he must now present it to this Court in a form which would otherwise be

admissible at trial, that is, in the form of affidavits or unsworn declarations. An affidavit is a written

statement sworn before a notary public. An unsworn statement, made and signed under the penalty

of perjury, may also be submitted. Affidavits or sworn statements must be presented by Petitioner

to this Court within thirty (30) days of the entry of this Order. As stated by Rule 56(e)(2),

Petitioner's failure to respond may result in granting summary judgment to Respondent, that is, the

dismissal of the Motion to Vacate with prejudice.

IT IS, THEREFORE, ORDERED that Petitioner has thirty(30) days from the entry of this

Order to file his response, including any evidence, to Respondent's Motion for Summary Judgment.

SO ORDERED.

Signed: February 21, 2009

Frank D. Whitney

United States District Judge

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